

**EXPEDITED TREATMENT REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35557**

**REASONABLENESS OF BNSF RAILWAY COMPANY  
COAL DUST MITIGATION TARIFF PROVISIONS**

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**BNSF RAILWAY COMPANY'S  
MOTION TO COMPEL DISCOVERY FROM  
UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI**

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Respondent BNSF Railway Company (“BNSF”) hereby requests pursuant to 49 C.F.R. § 1114.31(a) that the Board issue an order compelling Union Electric Company d/b/a/ Ameren Missouri (“Ameren Missouri”) to respond to certain document requests contained in BNSF’s First Set of Interrogatories and Requests for Production, served on January 10, 2012. BNSF requests expedited consideration of this motion in light of the fast approaching close of discovery in this proceeding.

Ameren Missouri has refused to respond to most of the document requests that BNSF propounded in its January 10, 2012 discovery requests. Ameren Missouri’s refusal to provide the requested discovery comes close on the heels of the refusal of Western Coal Traffic League (“WCTL”), the shipper association responsible for initiating this proceeding, to produce information relating to the issues in this case. BNSF filed a motion to compel discovery responses from WCTL on January 27, 2012. The shippers in this case are challenging the reasonableness of BNSF’s Coal Loading Rule while trying to avoid any discovery obligations for the production of relevant materials that would create a record on which the Board can address their claims. The Board should not allow the shippers to have it both ways. The requests that

BNSF has propounded to Ameren Missouri are relevant and narrowly defined and the Board should order Ameren Missouri promptly to respond to those requests.

### **BACKGROUND**

The Board initiated this proceeding in response to a petition filed by WCTL on August 12, 2011 to reopen the decision in *Ark. Elec. Coop. Corp.—Pet. for Decl. Order*, Docket No. FD 35305 (STB served Mar. 3, 2011) (the “*Coal Dust I* Decision”), enjoin BNSF’s Coal Loading Rule that was adopted to comply with the Board’s *Coal Dust I* Decision, and order BNSF to participate in broad, multi-party mediation regarding coal dust mitigation. See *Petition to Reopen and for Injunctive Relief Pending Board-Supervised Mediation*, STB Finance Docket No. 35305 (filed August 11, 2011) (“*Petition to Reopen*”). The Board denied WCTL’s petition in decisions dated August 31, 2011 and November 22, 2011. Instead, the Board initiated this declaratory order proceeding to address the narrow issue of “the reasonableness of the safe harbor provision” that BNSF adopted in its Coal Loading Rule. Nov. 22, 2011 Decision at 4. On December 16, 2011, the Board adopted an expedited procedural schedule, under which the fifty-day discovery period closes on February 6, 2012, and opening evidence is due on March 20, 2012.

On December 27, 2011, Ameren Missouri filed a notice of its intent to participate in this proceeding. BNSF served its First Set of Interrogatories and Requests for Production of Documents on Ameren Missouri on January 10, 2012. *See* Ex. 1. The discovery requests—which consist of nine interrogatories and ten requests for production—sought information relating to issues relevant to the reasonableness of the safe harbor provision in the Coal Loading Rule. BNSF has served similar discovery requests on all shippers and shipper organizations participating in this proceeding.

On January 25, 2012, BNSF received Ameren Missouri's responses and objections. *See* Ex. 2. Ameren Missouri refused to respond to twelve of BNSF's nineteen discovery requests. On February 6, 2012, counsel for BNSF conferred by telephone with counsel for Ameren Missouri. BNSF reiterated its willingness to consider further narrowing of BNSF's requests to address any valid burden concerns, but the parties were unable at that time to resolve the disputed matters addressed herein.

BNSF seeks an order compelling the production of documents in response to Requests for Production ("RFP(s)") 3, 4, 5, 6, 7, 8, and 9. The grounds for this request are set out below.

### **ARGUMENT**

#### **I. Ameren Missouri Has No Grounds For Refusing To Produce Documents That Ameren Missouri Concedes Are Relevant To The Issues In This Case.**

The Board's rules permit "discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. §1114.21(a). Discovery is not limited to "the information that [a party] believes is sufficient" to prove its case.

*See Seminole Electric Coop., Inc. v. CSX Transport, Inc.*, Docket No. 42110, at 2 (STB served Feb. 17, 2009). Instead, a party is generally "entitled to all relevant and potentially admissible information." *Id.*

The information that BNSF seeks from Ameren Missouri is clearly relevant to the issues that the shippers have raised in this proceeding. Indeed, Ameren Missouri does not object to producing the information sought in RFP Nos. 3, 4, 5, 8 and 9 on relevance grounds.

RFP Nos. 3 and 4 seek information generally on coal dust remediation plans and communications with persons, including mines and suppliers of coal dust products and services, relating to Ameren Missouri's implementation of coal dust remediation efforts. The requested materials seek information that is central to this proceeding, including information on the costs

of different coal dust suppression products and services and the efforts that will need to be undertaken in order to comply with BNSF's Coal Loading Rule.<sup>1</sup> The coal shippers challenging BNSF's Coal Loading Rule have made it clear that they intend to present evidence about a range of actions that must be undertaken to comply with BNSF's Coal Loading Rule. *See* Petition to Reopen, Richards V.S. at 6-7 (filed Aug. 12, 2011). Coal shippers cannot challenge the reasonableness of BNSF's Coal Loading Rule based on supposed concerns about the actions that must be taken to comply with the Coal Loading Rule but then refuse to provide any discovery about those compliance activities.

RFP No. 5 seeks information on the effects, if any, that coal dust suppression products or services have on railroad or shipper employees and property. Again, coal shippers challenging BNSF's Coal Loading Rule have already indicated that they intend to address these issues in their evidence in this case. *See* Petition to Reopen, Richards V.S. at 6-7 (discussing the "impact on worker health and safety" and the "impact of spray application on the environment.") Shippers cannot raise issues in their challenge to BNSF's Coal Loading Rule without agreeing to produce information in their own files about the issues that they have raised.

RFP Nos. 8 and 9 seek information about discussions and communications regarding the Coal Loading Rule and coal dust losses from rail cars in transit. The relevance of such information to the issues in this proceeding is clear on its face.

Ameren Missouri does not contest the obvious relevance of the information sought in the RFPs discussed above. Ameren Missouri's primary basis for objecting to those requests is its

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<sup>1</sup> While Ameren Missouri agreed to produce documents in response to BNSF's RFP No. 2, which seeks information relating to methods for reducing coal dust lost from rail cars in transit and specifically about the costs and benefits of such methods, Ameren Missouri's counsel has indicated that Ameren Missouri does not intend to produce the specific information sought in RFP Nos. 3 and 4 about Ameren Missouri's coal dust suppression arrangements, costs, and plans.

vague claim that the requests are motivated by an “improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri’s transportation contracts which are outside the STB’s jurisdiction.” Ex. 2 at 5-6. Ameren Missouri provides no explanation whatever as to why the information sought by BNSF would be relevant to a “potential enforcement action” under Ameren Missouri’s transportation contract. But even if the information might be relevant to a “potential enforcement action,” it is also relevant to the issues raised in this proceeding and therefore should be produced here.

Moreover, the Protective Order in the proceeding would protect Ameren Missouri from any improper use of the discovery produced in this proceeding in any litigation involving Ameren Missouri’s contract obligations. Under the Protective Order, Ameren Missouri may designate information as confidential or highly confidential. Information produced with these designations “[s]hall be used solely for the purpose of this proceeding and any judicial review proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.” Jan. 13, 2012 Decision, Appx. ¶ 1(a).

Ameren Missouri also claims in response to each RFP that the requests are “overly broad and unduly burdensome.” Because Ameren Missouri has objected to producing the information under any circumstances due to its purported concerns about a “potential enforcement action,” it has not been possible to address Ameren Missouri’s burden concerns. BNSF does not believe that any of its discovery requests are overbroad or unduly burdensome. However, as stated in its discovery requests and reiterated in discussions with Ameren Missouri’s counsel, BNSF is prepared to cooperate with Ameren Missouri to address any legitimate burden concerns that Ameren Missouri may have. *See* Ex. 1 at 1.

**II. Information Relating To The Impact Of Coal Dust Suppression Products On Electricity Generation And To Coal Shippers' Use Of Coal Dust Suppression Products In The Handling And Storage Of Coal Is The Proper Subject Of Discovery In This Proceeding.**

BNSF also seeks an order compelling the production of documents in response to RFP Nos. 6 and 7. Unlike the document requests discussed above, Ameren Missouri objects to these requests on relevance grounds. Those relevance objections are misplaced.

RFP No. 6 seeks information about the effects, if any, that coal dust suppression products or services may have on the generation of power at power generating facilities. Coal shippers have raised this issue as one of a number of possible concerns about BNSF's Coal Loading Rule. Petition to Reopen, Richards V.S. at 6-7 (stating that mines must "[d]etermine . . . boiler performance impacts."). It is not appropriate for coal shippers to suggest that there are concerns about the use of coal dust suppression products but then refuse BNSF discovery of information that will show those concerns to be unfounded.

RFP No. 7 seeks information relating to coal dust suppression activities in the handling and storage of coal. Chemical agents like those that are the subject of BNSF's Coal Loading Rule have long been used to control coal dust in the handling and storage of coal. BNSF believes that the long and widespread use of topper agents to control coal dust suppression is relevant to the reasonableness of the safe harbor provisions of BNSF's Coal Loading Rule. Indeed, coal shippers have already raised the issue of the use of coal dust suppression products at coal-fired utility electric generating facilities. WCTL's witness Mark Viz admits that "many if not all topper sprays/surfactants were designed for use in dust mitigation from static coal stockpiles at coal-burning power plants." Petition to Reopen, Viz V.S. at 3. Coal shippers apparently intend to argue that the benefits that have been obtained through the use of topper agents in handling and storing coal may not be available in the context of rail cars in transit. But

BNSF is clearly entitled to information regarding the experience of coal shippers in using topper agents to suppress coal dust in the handling and storage of coal in order to evaluate such claims. The widespread use of chemical topper agents to suppress coal dust in the coal industry will clearly be relevant to any claim by coal shippers that BNSF's safe harbor based on the use of such topper agents is unreasonable.

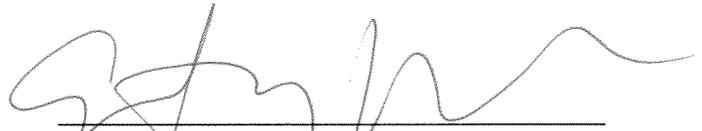
Moreover, coal shippers have made it clear that they intend to challenge BNSF's Coal Loading Rule on the basis that the costs incurred to apply topper agents to suppress coal dust are high. Petition to Reopen at 20. BNSF is entitled to information about the costs that coal shippers incur to suppress coal dust in the handling and storage of coal to put any claims by coal shippers about high compliance costs into proper perspective.

Ameren Missouri also claims that BNSF's RFP Nos. 6 and 7 are overbroad and unduly burdensome. But as BNSF indicated in its discovery requests and in follow-up discussions with Ameren Missouri's counsel, BNSF is willing to cooperate with Ameren Missouri to address any legitimate burden concerns that Ameren Missouri may have if Ameren Missouri withdraws its relevance objection.

## CONCLUSION

For the reasons set forth above, the Board should compel Ameren Missouri to respond to Requests for Production 3, 4, 5, 6, 7, 8, and 9 in BNSF's First Set of Interrogatories and Requests for Production of Documents to Ameren Missouri.

Respectfully submitted,



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ATTORNEYS FOR  
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February 6, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this sixth day of February, 2012, I caused a copy of the foregoing to be served by e-mail and first-class mail, postage prepaid, upon all parties of record in this case as follows:

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# Exhibit 1

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35557**

**REASONABLENESS OF BNSF RAILWAY COMPANY  
COAL DUST MITIGATION TARIFF PROVISIONS**

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**BNSF RAILWAY COMPANY'S  
FIRST SET OF INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO  
UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI**

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BNSF Railway Company (“BNSF”), pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, submits the following First Set of Interrogatories and Requests for Production of Documents to Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”). BNSF requests that Ameren Missouri serve its written objections and answers by January 25, 2012, and that Ameren Missouri produce copies of responsive documents at the offices of Steptoe & Johnson LLP on a rolling basis, as the documents become available.

BNSF is prepared to cooperate with Ameren Missouri to facilitate the expeditious and cost-efficient production of information responsive to these discovery requests. BNSF is also willing to abide by the terms of the joint proposed protective order for this case submitted by BNSF and Western Coal Traffic League (“WCTL”) to the STB on December 20, 2011 in the event that the STB has not entered the protective order by the time Ameren Missouri responds to these discovery requests. BNSF requests that Ameren Missouri promptly contact BNSF’s undersigned counsel should Ameren Missouri have any questions regarding the meaning or scope of any of these discovery requests, the

nature of the information and documents responsive to them, or the procedure for producing responsive material.

### **DEFINITIONS**

1. “Analyses” means any studies, reports, evaluations, memoranda, summaries, statistical compilations, presentations, reviews, audits, or other types of written, printed or electronic submissions of information, including drafts, preliminary, intermediate, and final versions.

2. “Black Hills Subdivision” means BNSF’s independently owned rail lines that extend from Campbell County, Wyoming at the north end of the Joint Line east through Edgemont and Alliance, Nebraska.

3. “BNSF” refers to BNSF Railway Company, and includes its predecessors.

4. “Coal Loading Rule” means Item 100, and Appendices A and B thereto, of BNSF’s Coal Rules publication denominated as Price List 6041-B, as issued on July 14, 2011 and any subsequent iterations thereof.

5. “Communication” means the transmittal or exchange of information of any kind in any form, including oral, written, or electronic form, with another Person, whether Person to Person, in a group, in a meeting, by telephone, letter, telefax, electronic mail, text message, or otherwise, and including without limitation any printed, typed, handwritten, or other readable document, and any tape recording, correspondence, memorandum, report, contract, diary, logbook, minutes, note, study, analysis, survey, and forecast.

6. “Document(s)” is used in the broadest sense permitted by 49 C.F.R. § 1114.30 and should be interpreted to include all writings and records of every type in Your possession, custody or control, or known by You to exist including but not limited to: electronically stored information, electronic mail, testimony and exhibits, contracts, drafts, agreements, memoranda, correspondence, letters, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses (as defined above), evaluations, studies (including economic and market studies), summaries, comparisons, tabulations, work papers, statistical records, proposals, outlines, charts, books, pamphlets, periodicals, published material, magazines, newspapers, advertisements, brochures, blueprints, graphs, telegrams, photographs, maps, bulletins, corporate or other minutes, notes, diaries, log sheets, calendars, appointment books, address books, schedules, ledgers, journals, transcripts, microfilm, microfiche, computer tapes, computer discs, computer data and printouts, data compilations, mechanical and electrical recordings, telephone and telegraphic communications, data sheets or data processing cards, speeches, and all other records, tables, written, electronic, or otherwise, and drafts of any of the above; including every copy of a document that contains handwritten or other notations or that otherwise does not exactly duplicate the original or any other copy and any attachments or appendices to any document.

7. “Joint Line” means the rail line that extends south from Caballo Junction in Campbell County, Wyoming, over 100 miles to connections with BNSF’s and Union Pacific Railroad Company’s independently owned east-west lines.

8. “Load Profiling” means loading uncovered coal cars in accordance with the “Redesigned Chute Diagram” included in the Coal Loading Rule.

9. “Person” means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions, organizations, or other entities of any kind.

10. “PRB” means the Powder River Basin located in Montana and Wyoming.

11. “Refer or relate to” means information that contains, describes, discusses, embodies, comments upon, identifies, incorporates, explains, contradicts, supports, regards, evidences, evaluates, summarizes, constitutes, comprises, or otherwise pertains to the subject matter of the request.

12. “Topper Agent” means a chemical agent, such as a surfactant, that is applied to the surface of coal loaded in rail cars for the purpose of reducing the amount of coal that is lost from rail cars while the coal is in transit by rail.

13. “You” and “Your” refer to Ameren Missouri, as well as its parent, predecessors, successors, subsidiaries, any of its employees, agents, partners, officers, directors, advisors, representatives, attorneys, independent contractors, expert consultants, affiliates, divisions, or departments, assignees, and all other persons acting (or who act or have acted) on its behalf.

14. When used in these requests, the phrase “in transit by rail” should be construed to include the movement of coal over any rail lines of any railroad and is not limited to movements of coal over the Joint Line or over BNSF’s lines in the Black Hills Subdivision.

## INSTRUCTIONS

1. Unless otherwise indicated, these requests cover the period from January 1, 2010 to the time Your responses are served on BNSF.

2. You are not required to reproduce any responsive documents produced in STB Finance Docket No. 35305 if the STB approves the proposed protective order that BNSF and WCTL filed with the STB on December 20, 2011.

3. “And”/“Or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of each document request all documents which might otherwise be construed as outside the scope of the document request.

4. References to the singular shall be construed to be plural, and references to the plural shall be singular, as necessary in order to bring within the scope of each document request all documents which might otherwise be construed to be outside the scope of the document request.

5. If any document called for by these requests for production is available in machine-readable format, please produce the document or information in that format, along with a description of the format and a decoder as well as any other information, necessary and sufficient to permit access to and an understanding of the electronic information.

6. If You for any reason (including the assertion of privilege), withhold documents or information responsive to any of these interrogatories or document requests, You should state the specific factual and legal basis for doing so in Your

response to these discovery requests, and produce documents or information for any part of the interrogatory or request which is not alleged to be objectionable or protected.

7. “Identify” as used herein with respect to a document shall be read to require a statement of all of the following information regarding the document:

- (a) Type of document (e.g., letter, memo, e-mail, etc.);
- (b) Subject matter;
- (c) Date;
- (d) Author(s); and
- (e) Addressee(s).

8. “Identify” as used herein with respect to any person, including an entity or natural person, shall be read to require a statement of all of the following information relating to such entity or individual:

- (a) Full name;
- (b) Present or last known employer;
- (c) Present or last known business address or, alternatively, home address;
- (d) Present or last known title;
- (e) Address of principal place of business or other activity; and
- (f) Present or last known phone number.

9. "Identify" as used herein with respect to any communication, including any telephone conversation, correspondence, or meeting shall be read to require a statement of all of the following information:

(a) The date on which it occurred;

(b) The identity of each and every person who was present or who participated;

and

(c) The place at which it occurred (or, in the case of a telephone conversation, the location of each party).

### **INTERROGATORIES**

1. Please identify any studies or analyses that You are aware of that evaluate, estimate, or otherwise refer or relate to the costs of coal dust suppression products or services, including but not limited to Topper Agents.

2. Please identify any studies or analyses that You are aware of that evaluate, estimate, or otherwise refer or relate to the effectiveness of any method of suppressing coal dust, including but not limited to the application of Topper Agents or Load Profiling, in reducing the release of coal dust from rail cars while the coal is in transit by rail.

3. Please state whether You have caused a Topper Agent to be applied to any PRB coal loaded in rail cars since July 1, 2010, and if so, please identify the Topper Agent used, the mine(s) at which the Topper Agent was applied, and the number of rail cars to which the Topper Agent was applied since July 1, 2010.

4. Please state whether You have caused a method of suppressing coal dust, other than a Topper Agent or Load Profiling, to be applied to any PRB coal loaded in rail

cars since July 1, 2010, and if so, please identify the method used, the mine(s) at which the method was applied, and the number of rail cars to which the method was applied since July 1, 2010.

5. Please describe all arrangements that You have made with a coal mine or a supplier of coal dust suppression products or services for the future application of a Topper Agent to coal loaded in rail cars.

6. Please describe all arrangements that You have made with a coal mine or a supplier of coal dust suppression products or services for the future application of a method of suppressing coal dust, other than a Topper Agent or Load Profiling, to coal loaded in rail cars.

7. Please describe all methods that you are aware of that are used by coal shippers, utilities, or any other Person to reduce the release of coal dust from coal stockpiles at power generating facilities.

8. Please describe requests made by You to a coal mine or a supplier of coal dust suppression products or services for estimates of the costs to apply coal dust suppression products or services, including but not limited to Topper Agents, to coal loaded in rail cars, and please describe any responses to such requests.

9. Please identify any coal dust suppression products or services, including but not limited to chemicals applied to coal at the mines or at power generating facilities, employed by You to reduce the amount of coal that is lost from coal stockpiles at power generating facilities, and please identify the costs of applying any such coal dust suppression products or services.

## **REQUESTS FOR PRODUCTION**

1. Please produce all documents created on or after January 1, 2005 that contain, reflect, or otherwise refer or relate to analyses performed by You or any other Person relating to the quantity of coal lost from rail cars while the coal is in transit by rail.

2. Please produce all documents created on or after January 1, 2005 that discuss, analyze, or otherwise refer or relate to methods for reducing the amount of coal that is lost from rail cars while the coal is in transit by rail, including but not limited to documents that refer or relate to:

(a) the costs of such methods;

(b) any comparisons of the costs of such methods with the costs of alternative methodologies; and

(c) the effectiveness of such methods.

3. Please produce all documents created on or after January 1, 2009 that refer or relate to arrangements, agreements, contracts, quotes, bids, offers, or any other communications between You and any Person, including but not limited to coal mines or suppliers of coal dust suppression products or services, regarding methods that could be used at coal mines to reduce the amount of coal that is lost from rail cars while the coal is in transit by rail.

4. Please produce all documents that refer or relate to Your plans to reduce the amount of coal that is lost from rail cars while the coal is in transit by rail.

5. Please produce all documents that discuss, analyze, or otherwise refer or relate to the effect of coal dust suppression products or services, including but not limited to Topper Agents, on employees of railroads, coal mines, coal shippers, or utilities, or on property or rail cars owned by railroads, coal mines, coal shippers, or utilities.

6. Please produce all documents that discuss, analyze, or otherwise refer or relate to the effect of coal dust suppression products or services, including but not limited to Topper Agents, on the generation of power at particular power generating facilities or at power generating facilities in general.

7. Please produce all documents that discuss, analyze, or otherwise refer or relate to methods for reducing the amount of coal that is lost from coal stockpiles at power generating facilities, including but not limited to:

(a) the costs of such methods;

(b) any comparisons of the costs of such methods with the costs of alternative methodologies;

(c) the effectiveness of such methods;

(d) the impact such methods have on the generation of power at particular power generating facilities or at power generating facilities in general; and

(e) legal or regulatory requirements for the suppression of coal dust.

8. Please produce all minutes, reports, agendas, summaries, or other documents referring or relating to meetings or conferences at which the subject of coal that is lost from rail cars while the coal is in transit by rail was discussed.

9. Please produce all documents that refer or relate to communications between You and any Person regarding the Coal Loading Rule.

10. Please produce all documents identified in Your responses to BNSF's Interrogatories, and all documents that contain facts upon which Your responses to BNSF's Interrogatories are based.

Respectfully submitted,



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ATTORNEYS FOR  
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January 10, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this tenth day of January, 2012, I caused a copy of the foregoing to be served by e-mail and first-class mail, postage prepaid, upon all parties of record in this case as follows:

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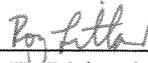
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# Exhibit 2

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35557**

**REASONABLENESS OF BNSF RAILWAY COMPANY  
COAL DUST MITIGATION TARIFF PROVISIONS**

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**RESPONSES AND OBJECTIONS TO  
BNSF RAILWAY COMPANY'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI**

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Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), pursuant to 49 C.F.R. Part 1114, hereby responds to the First Set of Interrogatories and Requests for Production of Documents (collectively "Requests") served by BNSF Railway Company ("BNSF") on January 10, 2012.

**GENERAL RESPONSES AND OBJECTIONS**

In addition to the specific objections raised below in response to individual Requests, Ameren Missouri objects generally to BNSF's Definitions, Instructions, Interrogatories, and Requests as follows:

1. Ameren Missouri objects to BNSF's Requests to the extent that they seek documents or information protected by the attorney-client privilege and/or subject to the attorney work-product doctrine. Any production of privileged or otherwise protected documents is inadvertent and shall not constitute a waiver of any claim of privilege or other protection. In addition, Ameren Missouri objects to BNSF Instruction No. 6 (requiring Ameren Missouri to state the specific factual and legal basis for withholding documents) on grounds of burden and relevance.

2. Ameren Missouri objects to BNSF's Requests to the extent they would impose burdens or obligations on Ameren Missouri exceeding those specified in applicable provisions of the Board's Rules of Practice at 49 C.F.R. Part 1114, as interpreted and applied in prior Board rulings, and reserves the right to supplement its objections as necessary.

3. Ameren Missouri objects to BNSF's Requests seeking Ameren Missouri to "identify," and to BNSF's Instruction Nos. 7 and 8 as unduly burdensome and beyond the scope of permissible discovery to the extent the Requests would impose a burden or obligation on Ameren Missouri exceeding those specified in applicable provisions of the Board's Rules of Practice at 49 C.F.R. Part 1114.

4. Ameren Missouri objects to BNSF's Requests as unduly burdensome to the extent that they seek documents or information: (i) in BNSF's own possession; (ii) readily available from public sources; or (iii) produced and/or filed in STB Finance Docket No. 35305.

5. Ameren Missouri objects to BNSF's Definition No. 13 ("You" and "Your") as overly broad, and Ameren Missouri objects to the extent that it requests documents or information not in Ameren Missouri's possession, custody, or control, or otherwise kept by Ameren Missouri in the ordinary course of business.

6. Ameren Missouri objects to producing documents or information that is confidential, commercially sensitive, or proprietary, including sensitive nonpublic information relating to third parties, except to the extent disclosure is permitted under the protective order in this proceeding.

7. Ameren Missouri objects to BNSF's Requests to the extent they request information in a format not maintained by Ameren Missouri in the regular course of business or not readily available in the form requested by BNSF. Where a Request seeks relevant, non-

privileged information in a form different from that maintained by Ameren Missouri in its ordinary course of business, Ameren Missouri will produce any responsive information in the form in which it is maintained by Ameren Missouri in the ordinary course of business.

8. Ameren Missouri objects to BNSF's Requests to the extent they seek the production of or information regarding "all documents" or "any studies" that "discuss," "analyze," "refer or relate" to a particular subject on grounds that those Requests are overly broad and unduly burdensome. Ameren Missouri will conduct a reasonable, good faith search for responsive, non-privileged information commensurate with the nature and expedited schedule of this proceeding.

9. Ameren Missouri objects to BNSF's Requests to the extent they would require Ameren Missouri to engage in a special study.

10. Ameren Missouri's willingness to produce some or all of the information sought by a particular Request should not be interpreted either as a waiver of Ameren Missouri's objections or as an admission that such information is relevant to the case.

11. Ameren Missouri objects to BNSF's Definition No. 14 ("in transit by rail") as overly broad and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12. Ameren Missouri objects to BNSF's Requests to the extent they seek information or documents created before January 1, 2010.

### **INTERROGATORIES**

INTERROGATORY NO. 1: Please identify any studies or analyses that You are aware of that evaluate, estimate, or otherwise refer or relate to the costs of coal dust suppression products or services, including but not limited to Topper Agents.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information regarding studies or analyses performed by BNSF or its consultants and which therefore are available from BNSF's own files. Ameren Missouri also objects to the Request to the extent that it seeks information regarding studies or analyses that were produced or filed in STB Finance Docket No. 35305. Subject to and without waiving its general and specific objections, Ameren Missouri states that it is aware of numerous studies and information from the record in STB Finance Docket No. 35305 referring or relating to the costs of coal dust suppression products or services.

INTERROGATORY NO. 2: Please identify any studies or analyses that You are aware of that evaluate, estimate, or otherwise refer or relate to the effectiveness of any method of suppressing coal dust, including but not limited to the application of Topper Agents or Load Profiling, in reducing the release of coal dust from rail cars while the coal is in transit by rail.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information regarding studies or analyses performed by BNSF or its consultants and which therefore are available from BNSF's own files. Ameren Missouri also objects to the Request to the extent that it seeks information regarding studies or analyses that were produced or filed in STB Finance Docket No. 35305. Subject to and without waiving its general and specific objections, Ameren Missouri states that it is not aware of studies or analyses that would not already be in the possession, custody, or control of BNSF or its consultants.

INTERROGATORY NO. 3: Please state whether You have caused a Topper Agent to be applied to any PRB coal loaded in rail cars since July 1, 2010, and if so, please identify the

Topper Agent used, the mine(s) at which the Topper Agent was applied, and the number of rail cars to which the Topper Agent was applied since July 1, 2010.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has not caused any Topper Agent to be applied to any PRB coal loaded rail cars beyond those already known to BNSF or its consultants.

INTERROGATORY NO. 4: Please state whether You have caused a method of suppressing coal dust, other than a Topper Agent or Load Profiling, to be applied to any PRB coal loaded in rail cars since July 1, 2010, and if so, please identify the method used, the mine(s) at which the method was applied, and the number of rail cars to which the method was applied since July 1, 2010.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has not caused any method of suppressing coal dust, other than a Topper Agent or Load Profiling, to be applied to its PRB coal loaded rail cars since July 1, 2010.

INTERROGATORY NO. 5: Please describe all arrangements that You have made with a coal mine or a supplier of coal dust suppression products or services for the future application of a Topper Agent to coal loaded in rail cars.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

INTERROGATORY NO. 6: Please describe all arrangements that You have made with a coal mine or a supplier of coal dust suppression products or services for the future application of a method of suppressing coal dust, other than a Topper Agent or Load Profiling, to coal loaded in rail cars.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

INTERROGATORY NO. 7: Please describe all methods that you are aware of that are used by coal shippers, utilities, or any other Person to reduce the release of coal dust from coal stockpiles at power generating facilities.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Furthermore, Ameren Missouri objects to the Request to the extent that information on "stockpiles" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and the burden of such request is completely out of proportion with the nature and expedited schedule in this proceeding.

INTERROGATORY NO. 8: Please describe requests made by You to a coal mine or a supplier of coal dust suppression products or services for estimates of the costs to apply coal dust suppression products or services, including but not limited to Topper Agents, to coal loaded in rail cars, and please describe any responses to such requests.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

INTERROGATORY NO. 9: Please identify any coal dust suppression products or services, including but not limited to chemicals applied to coal at the mines or at power generating facilities, employed by You to reduce the amount of coal that is lost from coal stockpiles at power generating facilities, and please identify the costs of applying any such coal dust suppression products or services.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Furthermore, Ameren Missouri objects to the Request to the extent that information on "stockpiles" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and the burden of such request is completely out of proportion with the nature and expedited schedule in this proceeding.

### **REQUESTS FOR PRODUCTION**

DOCUMENT REQUEST NO. 1: Please produce all documents created on or after January 1, 2005 that contain, reflect, or otherwise refer or relate to analyses performed by You or any other Person relating to the quantity of coal lost from rail cars while the coal is in transit by rail.

RESPONSE: Ameren Missouri objects to this Request to the extent such request seeks the production of documents not within its possession, custody, or control. In addition, Ameren Missouri objects to the Request to the extent it is overly board and unduly burdensome. In addition, Ameren Missouri also objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri in STB Finance Docket No. 35305. Subject to and without waiving its general and specific objections, Ameren Missouri states that will conduct a search for responsive, non privileged

materials that is commensurate with the nature and expedited schedule of this proceeding and created on or after January 1, 2010, and will produce such materials, if any, to the extent they do not relate to coal lost as the result of derailments.

DOCUMENT REQUEST NO. 2: Please produce all documents created on or after January 1, 2005 that discuss, analyze, or otherwise refer or relate to methods for reducing the amount of coal that is lost from rail cars while the coal is in transit by rail, including but not limited to documents that refer or relate to:

- (a) the costs of such methods;
- (b) any comparisons of the costs of such methods with the costs of alternative methodologies; and
- (c) the effectiveness of such methods.

RESPONSE: Ameren Missouri objects to this Request to the extent such request seeks the production of documents not within its possession, custody, or control. In addition, Ameren Missouri objects to the Request to the extent it is overly board and unduly burdensome. In addition, Ameren Missouri also objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Subject to and without waiving its general and specific objections, Ameren Missouri states that will conduct a search for responsive, non privileged materials that is commensurate with the nature and expedited schedule of this proceeding and created on or after January 1, 2010, and will produce such materials, if any.

DOCUMENT REQUEST NO. 3: Please produce all documents created on or after January 1, 2009 that refer or relate to arrangements, agreements, contracts, quotes, bids, offers, or any other communications between You and any Person, including but not limited to coal mines or suppliers of coal dust suppression products or services, regarding methods that could be used at coal mines to reduce the amount of coal that is lost from rail cars while the coal is in transit by rail.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

DOCUMENT REQUEST NO. 4: Please produce all documents that refer or relate to Your plans to reduce the amount of coal that is lost from rail cars while the coal is in transit by rail.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

DOCUMENT REQUEST NO. 5: Please produce all documents that discuss, analyze, or otherwise refer or relate to the effect of coal dust suppression products or services, including but not limited to Topper Agents, on employees of railroads, coal mines, coal shippers, or utilities, or on property or rail cars owned by railroads, coal mines, coal shippers, or utilities.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

DOCUMENT REQUEST NO. 6: Please produce all documents that discuss, analyze, or otherwise refer or relate to the effect of coal dust suppression products or services, including but not limited to Topper Agents, on the generation of power at particular power generating facilities or at power generating facilities in general.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Furthermore, Ameren Missouri objects to the Request to the extent that information on "facilities" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and the burden

of such request is completely out of proportion with the nature and expedited schedule in this proceeding.

DOCUMENT REQUEST NO. 7: Please produce all documents that discuss, analyze, or otherwise refer or relate to methods for reducing the amount of coal that is lost from coal stockpiles at power generating facilities, including but not limited to:

- (a) the costs of such methods;
- (b) any comparisons of the costs of such methods with the costs of alternative methodologies;
- (c) the effectiveness of such methods;
- (d) the impact such methods have on the generation of power at particular power generating facilities or at power generating facilities in general; and
- (e) legal or regulatory requirements for the suppression of coal dust.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose. Furthermore, Ameren Missouri objects to the Request to the extent that information on "stockpiles" is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and the burden of such request is completely out of proportion with the nature and expedited schedule in this proceeding. Ameren Missouri also objects to Part (e) to the extent that it requires a legal conclusion that could just as easily be answered by BNSF.

DOCUMENT REQUEST NO. 8: Please produce all minutes, reports, agendas, summaries, or other documents referring or relating to meetings or conferences at which the subject of coal that is lost from rail cars while the coal is in transit by rail was discussed.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by

Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose and seeks documents that are protected by the attorney-client privilege and/or subject to the attorney work-product doctrine. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

DOCUMENT REQUEST NO. 9: Please produce all documents that refer or relate to communications between You and any Person regarding the Coal Loading Rule.

RESPONSE: Ameren Missouri objects to this Request to the extent such request is overly board and unduly burdensome. In addition, Ameren Missouri objects to this Request to the extent that it seeks information available from BNSF's own files and seeks information already produced by Ameren Missouri or other parties in STB Finance Docket No. 35305. Ameren Missouri also objects to this Request to the extent that it is interposed for an improper purpose and seeks documents that are protected by the attorney-client privilege and/or subject to the attorney work-product doctrine. Subject to and without waiving its general and specific objections, Ameren Missouri states that it has already provided BNSF with its compliance plan and BNSF's request beyond such plan is interposed for an improper purpose because of potential enforcement action based upon certain contractual provisions included by BNSF in Ameren Missouri's transportation contracts which are outside the STB's jurisdiction.

DOCUMENT REQUEST NO. 10: Please produce all documents identified in Your responses to BNSF's Interrogatories, and all documents that contain facts upon which Your responses to BNSF's Interrogatories are based.

RESPONSE: Subject to and without waiving its general or specific objections, Ameren Missouri will produce responsive, non-privileged materials as indicated in its responses to Interrogatory Numbers 1 through 9.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra L. Brown", written over a horizontal line.

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*Attorneys for Union Electric Company  
d/b/a Ameren Missouri*

January 25, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of January 2012, a copy of Union Electric Company d/b/a Ameren Missouri 's Responses and Objections to BNSF Railway Company's First Set of Interrogatories and Requests for Production of Documents was served via electronic delivery to:

Samuel M. Sipe, Jr.  
Steptoe & Johnson LLP  
1330 Connecticut Ave. N.W.  
Washington, DC 20036  
202.429.3000

*Counsel for BNSF Railway Company*

and via first class mail, postage prepaid, to all parties of record.

  
Sandra L. Brown